No. 17-949

In the Supreme Court of the United States

JOHN STURGEON, PETITIONER

v.

BERT FROST, IN HIS OFFICIAL CAPACITY AS ALASKA REGIONAL DIRECTOR OF THE NATIONAL PARK SERVICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether Section 103(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3103(c), divests the National Park Service of authority to regulate activities on navigable waters within the boundaries of National Park System units in Alaska.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 872 F.3d 927. An earlier opinion of the court of appeals (Pet. App. 26a-57a) is reported at 768 F.3d 1066. The decision of the district court (Pet. App. 58a-81a) is not published in the Federal Supplement but is available at 2013 WL 5888230.

JURISDICTION

The judgment of the court of appeals was entered on October 2, 2017. The petition for a writ of certiorari was filed on January 2, 2018 (Tuesday following a holiday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The National Park Service Organic Act, ch. 408, 39 Stat. 535, established the National Park Service and directed the Secretary of the Interior (Secretary) to manage the parks for the "fundamental purpose" of "conserv[ing] the scenery, natural and historic objects, and wild life" therein in a manner that "will leave them unimpaired for the enjoyment of future generations." 54 U.S.C. 100101(a) (Supp. III 2015). Congress directed the Secretary to "prescribe such regulations as the Secretary considers necessary or proper for the use and management" of the National Park System. 54 U.S.C. 100751(a) (Supp. III 2015).

Subsequently, Congress expressly provided that the Secretary may regulate activities to protect waters within units of the National Park System, by authorizing the Secretary in 1976 to "prescribe regulations * * * concerning boating and other activities on or relating to water located within System units, including water subject to the jurisdiction of the United States." 54 U.S.C. 100751(b) (Supp. III 2015); see Act of Oct. 7, 1976, Pub. L. No. 94-458, 90 Stat. 1939. Navigable waters are waters subject to the jurisdiction of the United States. See *United States* v. *Rands*, 389 U.S. 121, 123 (1967); *United States* v. *Appalachian Elec. Power Co.*, 311 U.S. 377, 404-405 (1940).

Exercising those authorities, the National Park Service has long set forth regulations to protect the waterways in National Parks, including rules governing fishing, sanitation, water skiing, and other activities. See, *e.g.*, 36 C.F.R. 2.13, 2.24, 2.28, 2.31 (1967). Among other rules, the National Park Service has prohibited the "operation or use of hovercraft" within the National Park System. 36 C.F.R. 2.17(e). That rule applies not only

within "[t]he boundaries of federally owned lands and waters administered by the National Park Service," but also on "[w]aters subject to the jurisdiction of the United States" within the boundaries of the National Park System—including navigable waters like the Nation River—without regard to the ownership of submerged lands beneath the waters. 36 C.F.R. 1.2(a)(1) and (3).

b. In 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. No. 96-487, 94 Stat. 2371 (16 U.S.C. 3101 *et seq.*)—the most recent in a series of major statutes addressing the allocation of federal lands in Alaska.

The United States acquired the land that became the State of Alaska in 1867 through a treaty with Russia that did not address the land tenure, if any, of Alaska Natives. 136 S. Ct. 1061, 1064-1065. As a consequence, title to the vast majority of the available land in Alaska remained uncertain—and potentially subject to competing aboriginal title claims by Alaska Natives—when the Alaska Statehood Act (Statehood Act), Pub. L. No. 85-508, 72 Stat. 339, was enacted in 1958. The Statehood Act authorized the State to select more than 100 million acres of "vacant and unappropriated" federal public lands in Alaska. § 6(a), 72 Stat. 340; see 136 S. Ct. at 1065.

The Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601 *et seq.*, which was enacted in 1971, sought to resolve conflicting claims to land in Alaska by extinguishing claims of aboriginal title, while also directing that certain lands be withheld from state selection and instead be available for Native groups and for reservation by the United States for conservation purposes. See 136 S. Ct. at 1065. The Native lands were to be selected by Alaska Native Corporations, 43 U.S.C. 1603(b),

1605, 1607, 1610-1615, and the federal lands reserved for conservation purposes were to be withdrawn by the Secretary, see 43 U.S.C. 1616(d)(2). ANCSA contemplated that the Secretary's recommendations would be approved by Congress within five years. 43 U.S.C. 1616(d)(2)(D). But after the Secretary designated lands for federal conservation purposes, Congress did not approve the recommendations within the statutory period. 136 S. Ct. at 1065. President Carter then invoked his authority under the Antiquities Act of 1906, ch. 3060, 34 Stat. 225, to designate the Secretary's selections as National Monuments without congressional approval. See 136 S. Ct. at 1065-1066.

Congress sought to put an end to these lands controversies through ANILCA. 136 S. Ct. at 1066. ANILCA took steps to effectuate the conveyance of Statehood Act land selections to the State and of ANCSA land selections to Alaska Native Corporations. See ANILCA §§ 1416-1431, 94 Stat. 2499-2543. And it fulfilled ANCSA's promise of preserving additional lands as parks and refuges in Alaska by setting aside millions of acres of public lands containing "nationally significant natural, scenic, historic, archeological, geological, scientific, wilderness, cultural, recreational, and wildlife values" to the United States, 16 U.S.C. 3101(a); see 136 S. Ct. at 1065, and by "continu[ing] * * * the opportunity for subsistence uses by rural residents of Alaska" on the public lands so reserved, 16 U.S.C. 3111. The lands reserved for conservation are set aside in "conservation system unit[s]"—a term of art referring to "any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness

Preservation System, or a National Forest Monument." 16 U.S.C. 3102(4); see 43 U.S.C. 1616(d)(2).

In creating new conservation system units, Congress stated that it intended to ensure the preservation of the areas it set aside—including their "waters," "freeflowing rivers," and "fish." 16 U.S.C. 3101. In addition, in each of the 13 provisions of ANILCA that either created or expanded a unit of the National Park System, Congress enacted a statement of purpose describing features of the area at issue that Congress intended to protect. See 16 U.S.C. 410hh, 410hh-1. In each case, those statutory purposes included protection of bodies of water such as rivers and lakes, protection of fish or marine mammal populations, or a combination thereof. *Ibid.* For some units of the National Park System, Congress's declared purposes included ensuring protection of particular identified waters. See 16 U.S.C. 410hh(1) (Aniakchak River); 16 U.S.C. 410hh(6) ("the Kobuk River Valley, including the Kobuk, Salmon, and other rivers"); 16 U.S.C. 410hh(8) (Noatak River); 16 U.S.C. 410hh(10) ("the entire Charley River basin"); see also 16 U.S.C. 410hh-1(2) ("to maintain unimpaired the water habitat for significant salmon populations").

Section 103(c) of ANILCA, 16 U.S.C. 3103(c), at issue in this case, was added to the bill that became ANILCA immediately prior to its enactment, to clarify the status of state-owned, Native-Corporation owned, and privately owned lands falling within the boundaries of conservation system units in Alaska. See Pet. App. 45a-47a. Because "Congress drew the boundaries of those units to 'follow hydrographic divides or embrace other topographic or natural features,'" millions of acres of state, Native Corporation, and private land fell within

conservation unit boundaries. 136 S. Ct. at 1066 (citation omitted). Congress specified that such areas should not be subjected to regulations applicable solely to public lands, by providing:

> Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit. No lands which, before, on, or after December 2, 1980, are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units.

16 U.S.C. 3103(c).

c. The Secretary has long concluded that navigable waters within National Parks and other conservation system units in Alaska can be regulated as public lands under ANILCA, by virtue of the doctrine of reserved water rights. That determination, in turn, has been ratified by Congress.

In connection with ANILCA's subsistence-use priority on "public lands," the Secretary determined that the definition of "public lands" under ANILCA includes navigable waters in which the United States has reserved water rights. See Gov't C.A. Br., *John* v. *United States*, No. 94-35481, 1994 WL 16058810, at *3-*4 (9th Cir. Sept. 19, 1994). The Ninth Circuit then agreed that "public lands" include "those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine." *Alaska* v. *Babbitt*, 72 F.3d 698, 704 (1995) (*Katie John I*), cert. dismissed, 516 U.S. 1036, and cert. denied, 517 U.S. 1187 (1996), adhered to *sub nom. John* v. *United States*, 247 F.3d 1032 (9th Cir. 2001) (en banc) (per curiam). Thereafter, the Secretary promulgated regulations through notice-

and-comment procedures concluding that the United States has reserved water rights in the navigable waters that lie within National Parks in Alaska, which meant that those waters can be regulated as "public lands" within the meaning of ANILCA. 50 C.F.R. 100.3(b); see 64 Fed. Reg. 1276, 1279 (Jan. 8, 1999); see also 62 Fed. Reg. 66,216, 66,217-66,218 (Dec. 17, 1997) (proposed rule).

Congress delayed for several years, through temporary moratoria, the implementation of the regulations that identified "public lands" in this manner. See, *e.g.*, Department of the Interior and Related Agencies Appropriations Act, 1996, Pub. L. No. 104-134, Tit. III, § 336, 110 Stat. 1321-210. But it ultimately provided that the Secretary's regulations would take effect unless before October 1, 1999, Alaska enacted its own subsistence-use priority (in which case, under ANILCA, state subsistence-use rules, rather than federal subsistence-use rules, would govern public lands). See Department of the Interior and Related Agencies Appropriations Act, 1999 (1999 Appropriations Act), Pub. L. No. 105-277, Div. A, Tit. III, § 339(b)(1), 112 Stat. 2681-296. When Alaska did not do so, the federal regulations took effect. See 16 U.S.C. 3102 note.

Since 1996, National Park Service regulations have also made clear that National Park Service rules apply on all "[w]aters subject to the jurisdiction of the United States, includ[ing] navigable waters," "within the boundaries of [the] National Park System." 61 Fed. Reg. 35,133 (July 5, 1996) (internal quotation marks omitted); see 36 C.F.R. 1.2(a)(3) (rules apply to navigable waters "without regard to the ownership of submerged lands"). In promulgating that rule, the Secretary explained that the rule "clarifies and interprets existing [National Park Service] regulatory intent, practices and policies,"

rather than adopting any new position. 61 Fed. Reg. at 35,133.[1] In adopting that rule, the Secretary also rejected Alaska's contention that "ANILCA § 103(c) preempts [the National Park Service's] well-established authority on navigable waters" within Alaska. *Id.* at 35,135.

2. a. In September 2007, National Park Service officers observed petitioner repairing a hovercraft on the Nation River within the Yukon-Charley Rivers National Preserve, in violation of the regulation that bars the "operation or use of hovercraft" in the National Park System, 36 C.F.R. 2.17(e). Pet. App. 31a. The officers instructed petitioner to remove the hovercraft from the Yukon-Charley Rivers National Preserve. *Ibid.*

Petitioner complied, but later filed suit. Pet. App. 31a-32a. He challenged whether the National Park Ser-

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[1] The Secretary explained that the National Park Service had long treated its regulations as applicable on navigable waters within National Parks, and had issued regulations that depended on that premise. See 61 Fed. Reg. at 35,133 (citing examples). In 1987, however, an amendment providing that National Park Service rules were generally not applicable on *state* lands led to a dispute concerning the National Park Service's authority over navigable waters. *Id.* at 35,134 (citing 52 Fed. Reg. 35,238 (Sept. 18, 1987)). A person who had been issued a citation for shooting a seal in navigable waters of Glacier Bay National Park in Alaska contended that the 1987 amendment had deprived the National Park Service of authority on the waters in question, because States own the submerged lands beneath navigable waters in many National Parks. *Id.* at 35,133. The Secretary explained that the 1987 amendment had not been intended to alter the National Park Service's practice of regulating use of navigable waters within parks. *Id.* at 35,134. The revised rule clarified that the prior practice remained valid, by making park rules applicable on all navigable waters, irrespective of "ownership of submerged lands." *Ibid.*

vice had authority to regulate activity on navigable waters within units of the National Park System in Alaska. *Id.* at 32a. Petitioner argued that the Nation River and other navigable waters were "state-owned," and that Section 103(c) of ANILCA "precludes [the National Park Service] from regulating activities on state-owned lands and navigable waters that fall within the boundaries of National Park System units in Alaska." *Id.* at 30a.

b. The district court rejected petitioner's claim, granting summary judgment to the government. Pet. App. 58a-81a. The court concluded that petitioner's challenge failed even if the navigable waters of the Nation River were state-owned. It reasoned that Section 103(c) only limits the authority of the National Park Service to impose *Alaska-specific* rules on state-owned, Native-Corporation-owned, and privately owned lands within National Park System boundaries. *Id.* at 79a-80a. In reaching that conclusion, the court emphasized that Section 103(c) states that it limits only "those 'regulations applicable *solely* to public lands within [conservation system] units,'" and that conservation system units is a term that refers only to lands set aside in Alaska. *Id.* at 79a (quoting 16 U.S.C. 3103(c)) (emphasis added). Since the hovercraft ban applies throughout the National Park System, the court concluded that Section 103(c) posed no bar to the application of the hovercraft ban. *Id.* at 80a.

c. The court of appeals affirmed. Pet. App. 26a-57a. Like the district court, the court of appeals concluded that Section 103(c) concerns only Alaska-specific regulations on state, Native Corporation, or privately held land within the boundaries of the National Park System in Alaska. *Id.* at 48a-49a. It observed that the hovercraft regulation was "not so limited," because it "applies

to all federal-owned lands and waters administered by [the National Park Service] nationwide, as well as all navigable waters lying within [N]ational [P]arks." *Ibid.*

d. This Court granted a writ of certiorari and vacated the court of appeals' decision. 136 S. Ct. at 1064, 1072. The Court concluded that Section 103(c) could not reasonably be read as a prohibition on Alaska-specific regulations, when Section 103(c) was read in the context of other provisions of ANILCA. The Court emphasized that "ANILCA repeatedly recognizes that Alaska is different," and contains numerous "Alaska-specific provisions." *Id.* at 1070. Interpreting Section 103(c) in the context of those Alaska-specific provisions, the Court found it "implausible" that Congress would have prohibited the National Park Service from enacting rules or exceptions "recognizing Alaska's unique conditions." *Id.* at 1071.

The Court observed that the government had principally contended that the National Park Service could enforce rules on the Nation River within the Yukon-Charley Rivers National Preserve based "on very different arguments" than the one adopted by the court of appeals, noting that "[t]he agency stresse[d] that it has longstanding authority to regulate waters within federally managed preservation areas, and that Section 103(c) does not take any of that authority away." 136 S. Ct. at 1069. The Court "d[id] not decide" any of these arguments. *Id.* at 1072. It noted that the court of appeals could address on remand, among other questions, whether the Nation River qualifies as "public land" for purposes of ANILCA, and whether the National Park Service has authority under 54 U.S.C. 100751(b) (Supp. III 2015) to regulate petitioner's activities on areas of

the Nation River within the boundaries of the park system, even if the river is not "public" land. 136 S. Ct. at 1072.

e. On remand, a unanimous panel of the court of appeals rejected petitioner's challenge to the application of the hovercraft rule, concluding that Section 103(c) did not strip the National Park Service of its authority to protect navigable waters within the boundaries of federal preserves. Pet. App. 1a-19a. The court observed that under longstanding circuit precedent, "ANILCA's 'definition of public lands includes those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine.'" *Id.* at 12a (citation omitted); see *id.* at 12a-13a (discussing *Katie John I*, 72 F.3d at 703; *John* v. *United States*, 720 F.3d 1214, 1232-1233 (9th Cir. 2013), cert. denied, 134 S. Ct. 1759 (2014)); see also *id.* at 8a (noting that "ANILCA's definition of 'land'" encompasses "lands, waters, *and interests therein*") (citation omitted). Applying that understanding, the court observed that it had upheld application on navigable waters within the National Park System of subsistence-use regulations for public lands. *Id.* at 12a-13a. The court also determined that application of the hovercraft rule at issue here—like the application of the subsistence-use regulations in its earlier decisions—served the purposes "for which ANILCA reserved lands as conservation system units." *Id.* at 14a. Accordingly, the court concluded, "ANILCA [S]ection 103(c) does not limit the National Park Service from applying the hovercraft ban on the Nation River in the Yukon-Charley." *Id.* at 19a.

Two members of the panel also joined a concurring opinion. Pet. App. 20a-23a (Nguyen, J., concurring). They agreed that under longstanding court of appeals

precedent, the United States could enforce the hovercraft rule based on its reserved-water-right interest in the waters at issue here. *Ibid.* But they would have concluded that the federal navigational servitude—rather than the reserved-water-rights doctrine—is the basis of the National Park Service's authority to enforce its regulations on navigable waters within conservation system units in Alaska. *Id.* at 21a-23a.

ARGUMENT

Petitioner challenges the court of appeals' determination that the National Park Service may enforce a rule concerning use of hovercraft on the navigable waters of the Nation River within the Yukon-Charley Rivers National Preserve. The court of appeals correctly rejected petitioner's claim. Its decision does not conflict with any decision of this Court or another court of appeals, and it does not present a question of exceptional importance warranting this Court's intervention. Further review is unwarranted.

1. The court of appeals correctly rejected petitioner's contention that the National Park Service lacks authority to regulate activity on any navigable waters within the boundaries of National Park System units in Alaska. The federal government has "paramount power" over navigable waters in the United States, *PPL Mont., LLC* v. *Montana*, 565 U.S. 576, 591 (2012) (citation omitted), pursuant to its "dominant servitude" or "superior navigation easement," *United States* v. *Twin City Power Co.*, 350 U.S. 222, 225 (1956) (citations omitted); see *Kaiser Aetna* v. *United States*, 444 U.S. 164, 174 (1979), see also *Alaska* v. *United States*, 545 U.S. 75, 116-117 (2005) (Scalia, J., concurring in part and dissenting in part).

Exercising that authority, Congress authorized the Secretary to "prescribe regulations * * * concerning boating and other activities on or relating to water located within [National Park] System units, including water subject to the jurisdiction of the United States." 54 U.S.C. 100751(b) (Supp. III 2015). The Secretary permissibly exercised that authority by promulgating rules concerning boating, fishing, and hovercraft use on navigable waters within units of the National Park System.

Section 103(c) limits federal regulation of the state, Native Corporation, and private inholdings that were brought within units of the National Park System when ANILCA drew unit boundaries around entire ecosystems. It does so by providing that "[n]o lands which, before, on, or after" the date of ANILCA's enactment "are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units," and that "[o]nly those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit." 16 U.S.C. 3103(c). Section 103(c) thus limits regulation of lands that are not "public lands."

As the court of appeals correctly concluded, Section 103(c) does not withdraw, within Alaska, the Secretary's authority to enforce rules protecting navigable waters within units of the National Park System. While Section 103(c) protects state-owned, Native-Corporation-owned, and privately owned lands from "regulations applicable solely to public lands within [conservation system] units," navigable waters are not lands that were "conveyed to the State, to any Native Corporation, or to

any private party." 16 U.S.C. 3103(c). Under the Submerged Lands Act, 43 U.S.C. 1301 *et seq.*, which was made applicable in Alaska through the Statehood Act, States generally hold "title to and ownership of the lands *beneath* navigable waters," and title to "the natural resources *within* such lands and waters," 43 U.S.C. 1311(a) (emphases added), but not to the navigable waters themselves. That is because "[n]either sovereign nor subject can acquire anything more than a mere usufructuary right" in navigable waters. *Federal Power Comm'n* v. *Niagara Mohawk Power Corp.*, 347 U.S. 239, 247 n.10 (1954) (citation omitted); see *United States* v. *Gerlach Live Stock Co.*, 339 U.S. 725, 744 (1950) ("As long ago as the Institutes of Justinian, running waters, like the air and the sea, were *res communes*—things common to all and property of none."); *Federal "Non-Reserved" Water Rights*, 6 Op. O.L.C. 328, 365-366 (1982).

Nor did Congress withdraw the Secretary's authority under Section 100751(b) to regulate the use of hovercraft or other activities on the Nation River within the Yukon-Charley Rivers National Preserve by providing that "[o]nly those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit." 16 U.S.C. 3103(c). That portion of Section 103(c) does not affect the Secretary's express authority under Section 100751(b) because Section 100751(b) broadly authorizes the Secretary to make rules "concerning boating or other activities *on or relating to* water located within [National Park] System units, *including water subject to the jurisdiction of the United States*"—a category that encompasses navigable waters. 54 U.S.C. 100751(b) (Supp.

III 2015) (emphases added). The Secretary's authority under Section 100751(b) thus does not turn on whether particular navigable waters constitute "a portion of [a conservation system] unit." 16 U.S.C. 3103(c). And the Secretary has exercised that authority by promulgating rules regarding hovercraft use that expressly apply on navigable waters of the United States (like the Nation River) within the boundaries of units of the National Park System, see 36 C.F.R. 1.2(a)(3), without any threshold requirement that those waters be specially classified as "a portion of [a park system] unit," 16 U.S.C. 3103(c).

Moreover, even if the Secretary could enforce rules within conservation unit boundaries only on areas satisfying ANILCA's definition of public lands, that requirement would be met here, in light of the United States' reserved water rights. See Pet. App. 9a-18a. ANILCA defines "public lands" as "lands, waters, *and interests therein*" to which the United States holds title. 16 U.S.C. 3102(1)-(3) (emphasis added); *Amoco Prod. Co.* v. *Village of Gambell*, 480 U.S. 531, 548 n.15 (1987). The United States has a reserved interest in waters that are appurtenant to federal land reservations, to the extent that such an interest is necessary to effectuate the purposes for which the federal lands are reserved. *Cappaert* v. *United States*, 426 U.S. 128, 138 (1976); see *United States* v. *New Mexico*, 438 U.S. 696, 709-711 (1978). And those reserved water rights are property interests. *Niagara Mohawk Power Corp.*, 347 U.S. at 251; see *Gerlach Live Stock Co.*, 339 U.S. at 736; see also *Arizona* v. *California*, 460 U.S. 605, 620 (1983) (describing reserved water rights as "rights in real property"). Accordingly, "the definition of public lands" under ANILCA "includes those navigable waters in which the

United States has an interest by virtue of the reserved water rights doctrine." *Alaska* v. *Babbitt*, 72 F.3d 698, 703-704 (9th Cir. 1995) (*Katie John I*), cert. dismissed, 516 U.S. 1036, and cert. denied, 517 U.S. 1187 (1996), adhered to *sub nom. John* v. *United States*, 247 F.3d 1032 (9th Cir. 2001) (en banc) (per curiam).

That understanding is embodied in regulations that Congress has ratified. The Secretary of the Interior and the Secretary of Agriculture promulgated regulations almost two decades ago to address the geographic scope of subsistence-use regulations that are applicable only on "public lands." See 16 U.S.C. 3114. In promulgating those regulations, the Secretary determined that public-lands rules concerning subsistence use would apply on the navigable waters inside the Yukon-Charley Rivers National Preserve and on other navigable waters appurtenant to federal lands in conservation system units, in light of the government's reserved-water-right interest in those waters. 64 Fed. Reg. at 1277, 1286-1287.

The court of appeals affirmed that approach, in decisions this Court declined to review. *Katie John I*, 72 F.3d at 704; *John* v. *United States*, 720 F.3d 1214, 1245 (9th Cir. 2013), cert. denied, 134 S. Ct. 1759 (2014). And Congress ratified the approach as well, by directing that (absent specified state action that Alaska did not take) those regulations would take effect. See 1999 Appropriations Act § 339(b)(1), 112 Stat. 2681-296; 16 U.S.C. 3102 note; pp. 6-7, *supra*.

Petitioner does not dispute (Pet. 30 n.2) that the United States has an "interest[]" in navigable waters within conservation system units for purposes of ANILCA's provisions permitting the Secretary to adopt subsistence-management rules for those waters.

Nor does amicus State of Alaska. See Alaska Amicus Br. 17 n.3 ("Alaska supports the subsistence regulations."). Rather, petitioner and the State suggest that the United States has an "interest[]" in those waters under ANILCA's "public lands" definition, 16 U.S.C. 3102(1) and (3), only for purposes of subsistence-use rules, and not for purposes of conservation-related rules. The court of appeals correctly found that position untenable. As the court observed, "ANILCA's definition of 'public lands' applies throughout the statute." Pet. App. 13a. Petitioner's approach, in which waters with associated federal reserved water rights would be "public lands" for some ANILCA purposes, but not for others, cannot be squared with ANILCA's single definition of "public lands" that applies across the Act's subsistence-use and conservation provisions. 16 U.S.C. 3102(3); see *Gambell*, 480 U.S. at 546 & n.13 (single definition of "public lands" that applies across multiple ANILCA provisions).

Moreover, Congress's identification of the purposes for which it reserved lands in ANILCA leaves no room for an argument that the federal government has reserved water rights in the navigable waters within the National Park System for purposes of subsistence use, but not for purposes of conserving park ecosystems, including protecting waters, rivers, and fish. Congress expressly identified each of those objectives as purposes of the reservations of land. See 16 U.S.C. 410hh, 3101. And it cannot seriously be contended that ANILCA's subsistence-use purposes require reservation of appurtenant waters, but its conservation purposes do not.

Surrounding provisions confirm that Section 103(c) did not abrogate the Secretary's authority to protect navigable waters in units of the National Park System

in Alaska pursuant to Section 100751(b). This Court previously observed that the Ninth Circuit's initial interpretation of Section 103(c) as a limitation on only Alaska-specific regulations "may be plausible in the abstract," 136 S. Ct. at 1070, but was not plausible when Section 103(c) was read in the context of surrounding provisions that showed Congress understood Alaska-specific regulations would sometimes be warranted, *id.* at 1070-1071.

Petitioner's reading of Section 103(c) is likewise implausible when considered in light of surrounding provisions. Congress stated repeatedly that its purposes in placing new areas in Alaska under the Park Service's regulatory authority through ANILCA included "to protect and preserve * * * rivers," 16 U.S.C. 3101(b), to protect the "waters" in the new and expanded units, 16 U.S.C. 3101(a), and to preserve opportunities for canoeing and fishing on "freeflowing rivers," 16 U.S.C. 3101(b). It did the same in its statements designating particular units for inclusion in the National Park System, including designations that state an intent to protect particular navigable waters like the "Aniakchak River," 16 U.S.C. 410hh(1), "the Kobuk River Valley, including the Kobuk, Salmon, and other rivers," 16 U.S.C. 410hh(6), and "the Noatak River," 16 U.S.C. 410hh(8), and "the entire Charley River basin," in the Yukon-Charley Rivers National Preserve, "including streams, lakes and other natural features," 16 U.S.C. 410hh(10). And specific provisions constraining the Secretary's authority to regulate activity such as motorboating, 16 U.S.C. 3121(b), and commercial fishing rights, see 16 U.S.C. 410hh-4, also reflect the premise that the Secretary may otherwise restrict ac-

tivity occurring on navigable waters within conservation system units. Those provisions demonstrate that Congress specifically intended that the National Park Service would have authority to protect the navigable waters within the parks and preserves that ANILCA created.

2. No further review is warranted of the court of appeals' determination that the National Park Service may enforce its hovercraft rule on navigable waters in which the United States has reserved water rights, within the boundaries of National Park System units in Alaska. The case presents no conflict among courts of appeals. Nor does the extent of the Secretary's authority to regulate boating, hovercraft use, and similar activities on navigable waters within the boundaries of parks in Alaska present a question of exceptional importance warranting this Court's intervention in the absence of a conflict.

Petitioner contends (Pet. 21-22) that this Court made clear that the question presented here was of sufficient importance to warrant this Court's intervention when it granted a writ of certiorari to review the Ninth Circuit's earlier decision construing Section 103(c) in petitioner's case. That argument is mistaken because the Ninth Circuit's prior decision could be understood to have much broader ramifications. As petitioner argued in his prior petition for a writ of certiorari, the Ninth Circuit's initial decision indicated that state-owned, Native-Corporation-owned, and privately owned lands within National Park System boundaries could be regulated as though they were publicly held lands—so long as they were not regulated through Alaska-specific regulations. 14-1209 Pet. 18-30. Petitioner accordingly argued that the earlier decision warranted review because "[t]he

Ninth Circuit has granted [the National Park Service] plenary authority to regulate State, Native Corporation, and private lands within Alaska's [N]ational [P]arks and preserves as though these lands were in fact part of these parks." *Id.* at 3. Petitioner further argued that this holding "ha[d] significant social and economic ramifications for the people of Alaska," because of the vast quantities of state-held, Native-Corporation-held, and privately held land within the boundaries of National Parks. *Id.* at 18; see *id.* at 19 (stating that the case "concerns the regulatory disposition of more than 19 million acres of Alaskan land," including 18 million acres of Native-Corporation-owned land falling within park boundaries). And petitioner argued that the Ninth Circuit's ruling would mean that "Native Corporations will be foreclosed from developing roughly 30 percent of the land that Congress conveyed to them." *Id.* at 20; see *id.* at 3 ("Alaska Natives depend on this land for economic support, which will be denied to them by [National Park Service] regulations that destroy its economic value and deny to these landowners the right to make productive use of their property."). No comparable considerations support certiorari here. The reserved-water-rights-based decision on remand does not suggest that the federal government may exercise control over the state-held, Native-Corporation-held, and privately held land at the center of the prior petition, because the decision on remand affirms only the National Park Service's authority to regulate ***navigable waters*** within units of the National Park System for particular purposes based on the reserved-water-rights doctrine, using the authorities in Section 100751(b).

Petitioner suggests (Pet. 22-23) that federal regulation of hovercraft use and other activities on navigable

waters within units of the National Park System constitutes an intrusion on state sovereignty that justifies this Court's intervention. But the court of appeals' determination that Section 103(c) did not withdraw the Secretary's authority under Section 100751(b) in Alaska simply affirms the applicability—within Alaska—of federal authority under Section 100751(b) that undisputedly applies to waters within units of the National Park System everywhere else in the country.

Moreover, petitioner is mistaken in suggesting (Pet. 21) that the decision subjects such waters to "the plenary control of [the National Park Service]." Section 100751(b) does not give the United States plenary authority over waters within units of the National Park System. And beyond this, the court of appeals explained that the United States has reserved water rights on waters appurtenant to federal lands within units of the National Park System only "to the extent needed to accomplish the purposes of the reservations." Pet. App. 12a (quoting *Katie John I*, 72 F.3d at 703). The court emphasized that the hovercraft regulation here serves the purposes for which Congress directed that the Yukon-Charley Rivers National Preserve be managed, including "maintain[ing] the environmental integrity of the entire Charley River basin, including streams, lakes, and other natural features." *Id.* at 14a (quoting 16 U.S.C. 410hh(10)); see *id.* at 15a-16a. The decision upholding application of the hovercraft regulation under these circumstances is correct and raises no issues of broad importance warranting this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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